

JERRY JACOVER | IP Veteran Touches the Marketplace, from Coke to Pop Music

by Laura Fletcher



Brinks Hofer Gilson & Lione, founded in Chicago in 1917, is widely considered the best intellectual property firm in the United States, topping lists from *U.S. News and World Report*, *The National Law Journal*, and the UK's *Chamber's USA*, and Jerrold A. Jacover is one of its lions.

Since joining the firm at the advent of the digital age in 1973, Jacover has been involved in high-profile cases involving household brands and names from Coca-Cola and Michael Jackson to Motorola and B.F. Goodrich & Company.

"I work with the creative people of society," Jacover says of what he loves most about his practice. "I work with scientists, inventors, doctors... I've also worked with the businessmen who figure out how to take these things into the marketplace, and when I look back 40 years ago at what the state of our technology was and what it is today, they're the ones who made it that way. I don't think they get enough credit."

"Our record at Coca-Cola was 34 and 0," says Dexter Brooks, who was assistant general counsel at Coca-Cola's headquarters in Atlanta for 34 years before retiring in 2004. "Jerry never lost a case for us... He's a heck of a litigator...just a good old down-to-earth individual."

Jacover, who graduated from the University of Wisconsin-Madison with a degree in electrical engineering and received his juris doctorate from the country's first IP law

program at Georgetown University in 1971, had no idea how rapidly his area of focus would expand throughout his career.

In 1983, the federal government created the United States Court of Appeals for the Federal Circuit in Washington, D.C., to deal specifically with patent law appeals. The new court soon began upholding protections on a plethora of inventions, including business methods, manufacturing processes, and cutting-edge biotechnology.

The damages on patent lawsuits became more generous, and as technology burgeoned, firms from around the country began courting Brinks attorneys with hopes of establishing their own IP practice groups.

Many of Jacover's partners at Brinks left, but he stayed put. "It would have hurt the people I liked, especially the younger people... It took a while for the rest of the world to realize what was going on... I even still get calls."

After serving as the Brinks firm president from 2001–2006, Jacover now spends much of his time advising younger lawyers and making sure the firm stays on the cultural and ethical path set by his mentors, Henry Brinks and Roy Hofer.

He also still maintains close ties with some of his earliest clients, including Peter Cherry of Cherry Corporation and Julie Nimmons, formerly of Schutt Sports.

Cherry, his very first client, is the son of an engineer who, in 1953, invented a coil-spring snap action switch that today is

used worldwide in household appliances, numerous commercial applications, and almost every make of automobile.

"Having a good robust patent portfolio is essential to any tech company's health," says Cherry. "It's the one way we can differentiate ourselves from competitors."

For his part, Jacover says Cherry taught him how to conduct himself in a humble and gentlemanly manner.

It was a lesson that stuck, according to Nimmons. The downstate music teacher bought Schutt Sports from her father in 1986, realizing that product innovation and growth would be essential to the small company's survival. She brought her husband and daughters with her to Chicago for her first meeting with Jacover.

"He made a big deal over them and just talked to them so politely," she recalls. "We were a small client, but you would not know that by the way we were treated."

As with the Cherry Corporation, Jacover primarily wrote patents for Schutt Sports. But writing patents would prove to be merely a respite from some of the most high-profile intellectual property litigation of the past 30 years.

Coke in Space and MJ in Court

As Coca-Cola's assistant general counsel, Brooks was responsible for all of the company's worldwide legal protection and licensing of its intellectual property.

In the early 1980s, Brooks approached the Brinks firm for assistance in what would become the longest-running trial in the U.S. District Court of the District of Northern Georgia at that time. Coca-Cola had spent years with Atlanta-based Reed Industries developing a home soda dispenser, and the two companies became embroiled in a host of patent infringement and breach-of-contract disputes.

"When we initially met Jerry, he was second chair to Clyde Willian, but we came to rely on him for more difficult challenges," Brooks notes.

In that initial case, Jacover did much of the work taking depositions and constructing arguments that would be easy for the judge and jury to follow. Brooks was impressed by his stamina and his ability to thrive in the hostile and volatile litigation process.

"I loved the competition," says Jacover, who swam in college and is a die-hard baseball fan.

"For most people who competed in sports, you respect your opponent, you fight it out... The harder they try, as long as they're playing by the rules, the more you respect them. And at the end, you know, you shake hands... I love that."

The Brinks team won the case after more than eight years of litigation, including numerous appeals. Judge Marvin Shoob wrote Brooks to inform him that Jacover was one of the best trial lawyers he had ever seen. Soon after the initial trial, Coca-Cola, which handled hundreds of trademark and patent cases per year, called on Jacover's services again.

A mock jury had pummeled the company 12-0 on an infringement case resulting from a marketing representative's failure to obtain all the proper consent forms for a promotional strategy the company used.

"I knew I needed Jerry to pick up the pieces and get involved in that case," Brooks says.

Jacover won again, using a clever skit comparing Judge Shoob's gavel to an advertising strategy Coke already had documented in its marketing and legal files.

He went on to handle some of the most high-profile litigation in the company's history, as Coca-Cola negotiated with NASA in 1985 to become the first soft drink in space. When Pepsi beat the company in the race to become one of the first American products in the Soviet Union, Jacover handled the political maneuvering to get Coca-Cola into the U.S.S.R. and onto the Mir Space Station in 1991, five years before PepsiCo filmed its space station commercial.

These feats required numerous amusing legal debates over whether a patent could be enforced in space, Jacover recalls.

"I was [at Coca-Cola headquarters] so much...my younger son would see me with a suitcase and say, 'I know, Atlanta.'"

A few years before the NASA endeavor, Jacover represented songwriter Fred Sanford in a lawsuit involving another household name: Michael Jackson.

Sanford claimed that the demo tape of a song he had sent to CBS Records had been plagiarized in Jackson's debut single from the *Thriller* album, a duet with Paul McCartney called "The Girl Is Mine."

"He had a very tough case," recalls Judge Marvin Aspen. "Music copyright problems are difficult because some musicians will tell you that there is no original music: everything is derived from something else... At that time, Michael Jackson was an idol... It was a very high-profile case in the city of Chicago, with long lines of people outside the courtroom waiting to get in to see the trial."

Jacover had to master music theory to question musicologists on the nature of

songwriting. Michael Jackson didn't read music, and he and several other witnesses testified on how he developed the song from a dream.

After initial deliberations, the jury ruled 4-2 in Jacover's and Sanford's favor, but over two more days of discussion, the two jurors who favored Jackson's story convinced the others to vote in their direction.

"He did a superb job," Aspen says of Jacover. "And he did something that a lot of people wish they could: He cross-examined Michael Jackson and Quincy Jones."

To this day in Jacover's office at Brinks, he keeps a framed courtroom sketch of him and Jackson facing off.

'Let's Just Try It'

In addition to protecting the patents of Motorola's early mobile communications, Abbott Laboratory's improvement of baby formula, and B.F. Goodrich's innovations on avionics equipment, Jacover has charitably promoted creative people's aspirations.

Since 1996, he has served on the board of directors for the American Technion Society, a foundation that supports science education and high-tech start-ups in the United States and Israel.

"Israel is a beleaguered country," explains Jacover, who used to play cops and robbers in Chicago's Peterson Elementary school play lot with Steve Nasatir, head of the local Jewish United Fund. Both boys' fathers had served in World War II, Jacover's as a navigator for B-29 bombers in the Pacific.

"They were very patriotic," Nasatir says. "They wanted to defeat the Nazis and make

America and the world safe for democracy."

Jacover didn't serve in the military, but he did do community work for 18 months as an attorney in Ralph Nader's Public Interest Research Group. There, he handled what he considers the most important case of his career, a lawsuit to protect an Appalachian farmer, C.G. Dalton, whose land was to be flooded by a public works project in southern Ohio.

Though he has struggled to balance work and family throughout his career, protégé Tracey Thomas says, "I know there are a lot of great fathers, but he was one of the great ones too."

He recalls Jacover's paternal nature extending beyond the home to Thomas himself. Jacover and his wife, Judi, a teacher, keep a kosher house and have raised three successful sons who inherited their father's interest in science and ideas: Aric, also an intellectual property lawyer; Evan, an engineer; and Brian, a doctor.

Now that he finally has some leisure time, Jacover has taken up novel writing.

"He won every writing contest he ever entered in school," notes childhood friend Robert Gilhooley, a baseball agent, who has known Jacover since the seventh grade. Jacover's first book, *Merkle's Curse*, traces the origin of the Chicago Cubs' misfortunes back through American history to the Medieval Europe of Dracula, and ultimately, the Hebrew scriptures. His new book, which explores the history of Appalachia, will be published this year.

Gilhooley, whom Jacover helped to file a patent on a "highway of the future" strictly for the fun of it, says, "He's a believer in some instances of ready, fire, aim: let's just do something. Let's just try it." ■



Courtroom sketch: Jacover cross-examines Michael Jackson in *Sanford vs. CBS Records*, Dec. 6, 1984